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No. 94-993

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

-vs-

GREGORY TURNER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Gregory Turner, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Illinois Appellate Court's opinion in this case. That decision is reported at 259 Ill. App. 3d 979, 631 N.E.2d 1236 (1st Dist. 1994).

STATEMENT OF THE CASE

The following pertinent facts are omitted from the petition:

Respondent called the police in response to a message the police had left with his parents that they were investigating a purse snatching and the respondent was the friend of the victim.

(R. 103) Respondent arrived at the police station at about 12:30 a.m.. (R. 105, 120) He remained in an interrogation room at the station and was subjected to intermittent questioning until he confessed at about 8 a.m.. (R. 116-17, 136-37, 155-57, 170-71, 181-84, 186)

The trial court suppressed the gym shoes as evidence not only on the ground that the consent of his parents to the search of respondent's room had been obtained by fraud, but also because it credited the evidence that respondent was a tenant in his parents' home and they had no authority to consent to a search of their son's room. (R. 154-56) Respondent and his parents testified that he rented the basement of his parents' house and they did not enter that area without his permission. (R. 212-13, 218, 227)

Petitioner argued in the appellate court that respondent's confession was admissible because it was the product of his being confronted with the fact that the police could not substantiate his alibi. State's Brief 20. Petitioner asked the Illinois Supreme Court to review the appellate court's decision on the ground that the appellate court had adopted a per se rule that whenever a defendant is confronted with evidence obtained through an unlawful search, a subsequent confession must be suppressed as the fruit of that search regardless of whether the defendant is also confronted with lawfully obtained evidence. Petition for Leave to Appeal 7.

REASONS WHY THE PETITION SHOULD BE DENIED

This Court has accepted that if a suspect's confession is induced by knowledge that the police had seized incriminating evidence, and that evidence was unlawfully seized, the confession is suppressible as the fruit of the unlawful seizure. Fahy v. Connecticut, 375 U.S. 85, 90-91 (1963). Consistent with Fahy, courts have found it to be obvious that a confession produced by confronting a suspect with evidence which is illegally seized is the fruit of that illegality. United States v. Nafzger, 965 F.2d 213, 217 (7th Cir. 1992); Ruiz v. Craven, 425 F.2d 235, 236 (9th Cir. 1970); Amador-Gonzalez v. United States, 391 F.2d 308, 318 (5th Cir. 1968); United States v. Marrese, 336 F.2d 501, 504 (3rd Cir. 1964). Petitioner provides this Court with no reason to revisit this question.

IF THE EXCLUSIONARY RULE DID NOT APPLY TO CONFESSIONS PRODUCED BY CONFRONTING A SUSPECT WITH ILLEGALLY SEIZED EVIDENCE, LAW ENFORCEMENT OFFICIALS WOULD BE ENCOURAGED TO CONDUCT UNLAWFUL SEARCHES TO OBTAIN INCRIMINATORY EVIDENCE WHICH COULD THEN BE EMPLOYED TO INDUCE A SUSPECT TO CONFESS.

Petitioner contends that application of the exclusionary rule to a confession obtained by confronting a suspect with unlawfully obtained evidence will not deter police misconduct, because the police cannot predict what evidence they might find during an unlawful search and therefore will not know in advance that they will obtain evidence which will produce a confession.

It is true that when police conduct an illegal search they may not know or even anticipate what evidence they might find.

This Court has never been tolerant of violations of the Fourth Amendment on the ground that the police acted with the hope rather than the expectation or certainty that evidence of a crime would be discovered. That the purpose of the police in conducting a search is purely exploratory may exacerbate rather than mitigate the Fourth Amendment violation. Andresen v. Maryland, 427 U.S. 463, 480 (1976) (general warrants which authorize an exploratory rummaging in a person's belongings violate the Fourth Amendment).

The need to deter police misconduct which fortuitously results in the discovery of evidence is no less than the need to deter misconduct which is preceded by knowledge that incriminating evidence will result. In either instance, law enforcement acts illegally and it is that illegal conduct, independent of the certainty that incriminating evidence will be unlawfully obtained, that the exclusionary rule is intended to deter.

Petitioner acknowledges that "[n]othing is more common than for a suspect to confess after the police have confronted that suspect with the evidence against him," Petition 16, and "[u]sually a suspect who confesses to a crime will have been confronted by the police during questioning with the evidence incriminating him." Petition 8. These admissions belie petitioner's claim that the police will not be motivated to conduct unlawful searches in an effort to obtain incriminating evidence with which they might confront the suspect and obtain a

confession. If the police routinely confront suspects with evidence to produce a confession, at least part of their motivation in conducting a search where they have a suspect is to obtain a piece of evidence which could result in an incriminating statement.

Creation of a rule refusing to apply the exclusionary rule to a confession produced by confronting a suspect with unlawfully obtained evidence will promote police misconduct and encourage Fourth Amendment violations. If the police know that their misconduct will result only in suppression of the evidence obtained during the search, but any confession obtained by confronting the suspect with that evidence will not be suppressed as the fruit of the illegality, they will be motivated to conduct unlawful searches in the hope of uncovering some incriminating evidence which can be employed to induce the suspect to confess. The confession will often constitute the more convincing and conclusive evidence of the suspect's guilt, while the evidence obtained during the unlawful search may be less probative of guilt and expendable from the viewpoint of the police and prosecution. See Fahy, 375 U.S. at 90 (noting that the defendants' confessions were more damaging than the illegally seized evidence).

The case at bar presents a compelling demonstration. Suppression of the bloody shoes, but not the confession, rewarded the police for violating respondent's rights. The police went to respondent's home for no apparent purpose other than to illegally

uncover some evidence which might connect respondent to the offense. They conducted an unlawful search, obtained incriminating evidence, and then confronted the respondent with that evidence during an interrogation session, resulting in respondent's confession. The confession provided sufficient evidence to convict respondent. The bloody shoes seized during the unlawful search became expendable. Had the appellate court not ordered the confession suppressed, the police would be encouraged to follow these same tactics in the future with little fear of jeopardizing convictions.

Decisions of this Court concluding that the exclusionary rule does not extend to circumstances in which its application would have no deterrent effect do not conflict with application of the exclusionary rule to a confession which is the product of an unlawful search. This Court has refused to apply the exclusionary rule where a law enforcement officer reasonably relies on a statute or a warrant authorizing a search, even though the statute is later held unconstitutional or the warrant ultimately found defective, because the officer could not have known that his conduct was unlawful. Illinois v. Krull, 480 U.S. 340 (1987); United States v. Leon, 468 U.S. 897 (1984).

An officer's objectively reasonable reliance on a statute or a warrant authorizing his conduct is not at all analogous to the circumstances at bar, where the police conducted what they knew to be an unlawful search of respondent's room with the hope of uncovering evidence connecting respondent to the offense. The

police did not reasonably believe that their conduct was lawful. They knew that respondent had not authorized a search of his room, as they represented to his parents. They used that subterfuge to gain access to respondent's room to conduct a search for evidence without a warrant or probable cause.

This Court concluded in Leon and Krull that application of the exclusionary rule would not serve the objective of deterrence because police officers cannot be expected to question the judgment of the legislature or a magistrate. The police did not rely on the judgment of a legislature or a magistrate in conducting their search of respondent's room. They intentionally engaged in misconduct to discover evidence of respondent's guilt and did not act in good faith. As their misconduct was purposeful, application of the exclusionary rule to the fruits of their unlawful conduct would promote the deterrent purpose of the rule.

BECAUSE THE POLICE OBTAINED RESPONDENT'S CONFESSION BY EXPLOITATION OF THE UNLAWFUL SEARCH, AND THE CONFESSION WAS NOT OBTAINED INDEPENDENT OF THAT ILLEGALITY, SUPPRESSION OF THE CONFESSION DOES NOT CONFLICT WITH THIS COURT'S DECISION IN NEW YORK V. HARRIS THAT THE EXCLUSIONARY RULE DOES NOT APPLY TO EVIDENCE WHICH IS NOT THE PRODUCT OF THE FOURTH AMENDMENT VIOLATION.

In New York v. Harris, 495 U.S. 14 (1990), this Court refused to extend the exclusionary rule to confessions made by a defendant at the police station after he had been arrested at his home in violation of Payton v. New York, 445 U.S. 573 (1980) without a warrant and in the absence of exigent circumstances,

but with probable cause. The Court reasoned that Payton was designed to protect the physical integrity of the home and was not intended to grant a criminal suspect protection for statements made outside his premises where the police have probable cause to arrest the suspect for committing the crime. 495 U.S. at 17. The continued custody of a suspect arrested in a home but without a warrant is not unlawful once he is removed from the house. Id. at 18. Therefore, a confession made at the station after the police remove the suspect from the house is not the product of the unlawful entry into the home which can be challenged as the fruit of an illegality, because it is not the fruit of the arrest being made in the house rather than somewhere else. Id. at 20.

Harris is not analogous to the instant case. In Harris, the illegality was confined to the entry into the home. Harris' detention and interrogation at the station was not tainted by that illegality and was independently supported by probable cause. There was nothing wrong about the police having control of his person at the time they conducted the interrogation. The police did not exploit the illegal entry into the home to obtain the statement.

Unlike Harris, the unlawful search of respondent's room and the seizure of the bloody shoes did taint the interrogation the police conducted of respondent. Respondent's confession was come at by exploitation of that illegality. The police produced the confession by confronting respondent with evidence which they

illegally obtained. The illegality was not confined to the unlawful search at the home but continued when the police confronted respondent with the shoes, as the police were not in lawful possession of that evidence.

Nothing in Harris suggests that if the police had obtained Harris' confession at the station by exploitation of evidence illegally seized from his home, the Court would not have found the confession to be the suppressible fruit of the illegal entry. In fact, the Court cautioned that it was not holding that a statement taken while a suspect is in custody is always admissible as long as the suspect is in legal custody. Id. at 20.

THERE IS NO CONFLICT OF STATE AUTHORITY REGARDING WHETHER A CONFESSION MAY BE THE FRUIT OF AN UNLAWFUL SEARCH WHICH THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE.

Petitioner represents that state reviewing courts are divided on the question of whether the exclusionary rule applies to a confession which is the product of an unlawful search. It cites State v. Manns, 220 Neb. 426, 370 N.W.2d 157 (1985), Mays v. State, 469 N.E.2d 1161 (Ind. 1984), People v. Pierce, 88 Ill. App. 3d 1095, 411 N.E.2d 295 (5th Dist. 1980) and State v. Rocheleau, 131 Vt. 563, 313 A.2d 33 (1973), as decisions in which state courts have concluded that the exclusionary rule has no application to such confessions. Petitioner has misinterpreted the holdings of those cases. In none of those cases did the courts conclude that the exclusionary rule was inapplicable.

Manns, Pierce and Rocheleau do not question that a

confession can be the fruit of an unlawful search and seizure. Rather each court engaged in a fruits analysis and concluded that the confession was not tainted by the illegality. Rocheleau, decided prior to Brown v. Illinois, 422 U.S. 590 (1975), concluded that the giving of Miranda warnings attenuated the taint of the illegal search, not that a confession which was the fruit of an unlawful search was not subject to an attenuation analysis. 313 A.2d at 38-40.

In Mays, the court held that defendant's confession was voluntary notwithstanding that it was obtained by confronting defendant with illegally seized evidence. 469 N.E.2d at 1165. It is not at all apparent that the court even purported to address whether admission of the confession violated the Fourth Amendment.

As petitioner has failed to demonstrate that courts are in conflict on the issue of whether the exclusionary rule has application to a confession obtained by confronting a suspect with illegally seized evidence, petitioner is incorrect that courts are in need of guidance on this issue and a grant of certiorari is not warranted.

THE APPELLATE COURT'S OPINION THAT PETITIONER FAILED IN ITS BURDEN OF PROVING ATTENUATION IS CONSISTENT WITH THIS COURT'S DECISIONS.

Petitioner asserts that an alternative basis for this Court to grant certiorari is that the appellate court's finding of no attenuation between the confession and the Fourth Amendment

violation is contrary to this Court's decisions. Petition 12-13.

Petitioner does not dispute that it bore the burden of proving that respondent's confession was not obtained by exploitation of the illegal search. The appellate court reasoned that because respondent was confronted with both the bloody shoes as well as the failure of his alibi immediately before he confessed, and it could not be ascertained that the confession was solely the product of the knowledge that his alibi was unsubstantiated, rather than also being influenced by the confrontation with the shoes, the petitioner failed in its burden of establishing an intervening circumstance. People v. Turner, 259 Ill. App. 3d 979, 631 N.E.2d 1236, 786 (1st Dist. 1994).

It is certainly reasonable to conclude that respondent's knowledge that the police had discovered the bloody shoes, rather than his awareness that the police could not verify his alibi, would provide the impetus for respondent to confess. Knowledge that the police uncovered evidence incriminating a suspect ordinarily would generate greater pressure on a suspect to confess than would knowledge that the suspect had not convinced the police of his innocence. As the appellate court's analysis is consistent with this Court's decision in Brown v. Illinois, 422 U.S. 590, 603-04 (1975) and Rawlings v. Kentucky, 448 U.S. 98 (1980), it should not be disturbed.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully Submitted,

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NOTICE OF MOTION AND PROOF OF SERVICE

To: Roland Burris, Attorney General, 100 West Randolph St., 12th Floor, Chicago, Illinois 60602
Jack O'Malley, State's Attorney, Cook County, 300 Daley Center, Chicago, Illinois 60601

Please take notice that on December 29, 1994, I mailed the Motion for Leave to Proceed in Forma Pauperis to the Clerk of the above Court, a copy of which is hereby served on you.

PATRICIA UNSINN
Assistant Defender

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned, being first duly sworn on oath, deposes and says that she personally served a copy of the Motion for Leave to Proceed in Forma Pauperis on the Attorney General and State's Attorney by personally delivering a copy of the same at their offices to an employee in charge of acceptance of service on December 29, 1994

DORA EASON

SUBSCRIBED AND SWORN TO BEFORE ME
on December 29, 1994.

NOTARY PUBLIC

OFFICIAL SEAL
ALICIA M. CORONA
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4-18-96

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